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AUG 31 2006REMARKS

Claims 11-27 are pending in the application. All claims stand rejected. Specifically, claims 11, 12, and 18-20 stand rejected under 35 U.S.C. §102 as being anticipated by Fourrey, U.S. Patent No. 6,291,803. Claims 13 and 14 stand rejected under 35 U.S.C. §103 as being unpatentable over Fourrey, in view of DE 102 28 406 ("DE '406"). Claims 15-17 also stand rejected under 35 U.S.C. §103 as being unpatentable over Fourrey, in view of Kochman, U.S. Patent 6,229,123. Finally, claims 20-27 stand rejected under 35 U.S.C. §103 as being unpatentable over Fourrey in view of Kochman.

The Examiner's remarks have been carefully considered by Applicant and Applicant submits that the claims, as amended, are in a condition for allowance. Specifically, Applicant traverses the rejections under 35 U.S.C. §102 and §103 and submit that a *prima facie* case of anticipation or obviousness has not been established. Nevertheless, the clarifying amendments made herein, highlight several distinguishing features of the present claims which will make apparent several features which are not taught or suggested by the cited prior art. In this regard, Applicant has incorporated the subject matter of claim 14 into claim 11, and modified claim 11 to make it clear that the claimed climate control device is something which sits on top of a structural core component such as the seat cushion core or dashboard structure or armrest, or the like. In other words, it is an assembly intended to be positioned on top of a structural element such that it is proximate tactile regions of a vehicle interior, for example, to provide improved passenger comfort.

As an initial matter, Applicant traverses the suggestion in the Office Action that the Fourrey reference anticipates claim 11 as filed. Specifically, Applicant traverses the statement in the Office Action that the flexible film (6) of Fourrey is analogous to Applicant's claimed intermediate layer. The claimed intermediate layer is arranged between the base layer and the cover layer and includes at least one support element which creates a hollow space such that the intermediate layer is air permeable. In contrast, item 6 of Fourrey is described as an impermeable film made from a synthetic material which is arranged underneath the layer 5. ('803 patent at col. 4, lines 63-65).

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Thus, Fourrey fails to disclose or suggest Applicant's claimed intermediate layer which includes at least one support element creating a hollow space between the base layer and the cover layer. Indeed Fourrey teaches away from such a structure because the cover 4 and base layer 8 of Fourrey are both permeable whereas the flexible film 6 of Fourrey is impermeable.

Additionally, Applicant has amended claim 11 to note that the support element is a substantially helical structure and that the electrical conductor runs inside or outside a space enclosed by the coils of the support element. Clearly, such a structure is not disclosed or suggested by the impermeable flexible film and spacer layer of Fourrey, and the Office Action does not indicate otherwise. Accordingly, for at least these reasons, the rejections under 35 U.S.C. §102 should be withdrawn.

Applicant also traverses the rejections under 35 U.S.C. §103 and submits that a *prima facie* case of obviousness has not been established. As noted above, the Fourrey reference, which is relied upon to support all of the obviousness rejections, fails to disclose Applicant's claimed intermediate layer including the supporting element which creates a hollow space between the base layer and the cover layer because the flexible film 6 of Fourrey is an impermeable layer without any hollow spaces whatsoever.

Further, the combination of Fourrey and DE '406 does not render obvious Applicant's independent claim 11 as amended. Claim 11 distinguishes the base layer from the structural core on which it is supported, and also clarifies that the supporting element and intermediate layer do not form any part of the structural core on which the climate control device is used. In contrast, the DE '406 reference discloses a plastic seat spring which is used in the seat cushion core as part of a conventional support structure. In other words, the spring-like element 14 of DE '406 is not in any way related to Applicant's claimed intermediate layer as it is not disclosed as a spacing element. It is a conventional structural support member – a seat spring – made out of plastic. Applicant disclosed DE '406 in the background portion of the specification and noted that the structural coils disclosed therein are not well-suited for climatized seat applications because they are located relatively far away from the passenger contact regions of the vehicle seat. Accordingly, the rejections under 35 U.S.C. §103 should be

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withdrawn because the combination of Fourrey and DE '406 fail to disclose or suggest at least Applicant's intermediate layer including a substantially helical supporting element with an electrical conductor running inside or outside a space enclosed by the supporting element such that it is proximate the cover layer and wherein neither the base layer nor intermediate layer form any part of the structural core of the vehicle seat.

The rejections under 35 U.S.C. §103 should also be withdrawn as no reason has been shown one of skill in the art would modify the impermeable flexible film 6 of Fourrey to incorporate the structural spring elements of DE '406 as the Office Action proposes. The Fourrey reference only discloses placing a heating mat under the cover and on top of a spacer layer which is a conventional seat heating arrangement. No reason has been shown why one of ordinary skill in the art would include a spiral element under the cover and then include heating conductors within the space created by the spiral element. The fact that one of skill in the art may have the capability to modify Fourrey to arrive at the invention is not the test for whether one of skill in the art would have arrived at the invention based upon the teachings of Fourrey and DE '406. *Ex Parte Levengood*, 28 USPQ2d 1300, 1301-02 (BPAI 1993) ("That which is within the capabilities of one skilled in the art is not synonymous with obviousness.") The focus must remain on what the prior art suggested to one of skill in the art at the time of the invention. The combination of references does not suggest Applicant's claimed invention. Thus, for at least these additional reasons, the rejections under 35 U.S.C. §103 should be withdrawn.

With regard to claim 19, Applicant further traverses the suggestion in the Office Action that Fourrey discloses an electrical conductor comprising a flat cable or flat conductor. There is no description of the structure of the heating mat 27 of Fourrey and, indeed, the conductors 27 in all of the figures appear to be round, not flat.

With respect to claim 20, Applicant traverses the suggestion in the Office Action that the combination of Fourrey and Kochman disclose or suggest Applicant's claimed fan attached to the support element by a direct or indirect anchoring mechanism. The claims, as amended, require that the support element is a helical structure which neither of these references disclose. Further, the fan of Fourrey is far removed from the cover,

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heating element or foam layer. Accordingly, the fan is not attached to the support element as required by claims 20 and 21.

Further, with respect to claim 24, the references do not disclose or suggest that the anchoring mechanism attaching the support element to the fan include a vibration damper. Nor do the references teach or suggest that the regulation of the heat output occur as a result of the PTC characteristics of the heating element, or as a result of the volume flow of the fan as required by claims 25-27. For these additional reasons, Applicant submits that claims 19-27 are non-obvious in view of the cited art.

Having overcome all of the objections and rejections set forth in the Office Action, Applicant submits that claims 11-13 and 15-27 are in a condition for allowance. A Notice of Allowability indicating the same is therefore earnestly solicited. The Examiner is invited to telephone the Applicant's undersigned attorney at (248) 223-9500 if any unresolved matters remain.

Respectfully submitted,

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